

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Whitney Beber	Team: Squad #6	CCRB Case #: 201901704	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 02/11/2019 12:10 PM	Location of Incident: East 180th Street and Grand Concourse	Precinct: 46	18 Mo. SOL 8/11/2020	EO SOL 3/28/2021	
Date/Time CV Reported Sat, 02/23/2019 10:54 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Sat, 02/23/2019 10:54 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Tyrone Seely	07393	951231	046 PCT
2. POM Henry Dasilva	21930	936430	046 PCT
3. An officer			046 PCT
4. POM Brendan Murphy	13053	955237	046 PCT
5. POF Fatime Osmanovic	15801	957925	046 PCT
6. LT John Lewis	00000	924073	046 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Tyrone Seely	Force: At East 180th Street and the Grand Concourse in the Bronx, Police Officer Tyrone Seely used physical force against § 87(2)(b)	
B.POM Henry Dasilva	Abuse: At East 180th Street and Grand Concourse in the Bronx, Police Officer Henry Dasilva searched the vehicle in which § 87(2)(b) was an occupant.	
C.POM Brendan Murphy	Abuse: At East 180th Street and Grand Concourse in the Bronx, Police Officer Brendan Murphy searched the vehicle in which § 87(2)(b) was an occupant.	
D.LT John Lewis	Abuse: At East 180th Street and the Grand Concourse in the Bronx, Lieutenant John Lewis seized § 87(2)(b)'s property.	
E.POM Tyrone Seely	Abuse: At the 46th Precinct stationhouse, Police Officer Tyrone Seely issued a summons to § 87(2)(b)	
F. An officer	Abuse: At the 46th Precinct stationhouse, an officer threatened to arrest § 87(2)(b)	
	§ 87(4-b), § 87(2)(g)	

### Case Summary

On February 23, 2019, § 87(2)(b) filed the following complaint with the Civilian Complaint Review Board online.

On February 11, 2019, at approximately 12:10 p.m. § 87(2)(b) drove down the Grand Concourse in the Bronx, and saw a car stopped. Police Officer Seely, of the 46<sup>th</sup> Precinct, exited his vehicle as § 87(2)(b) drove passed. Police Officer Seely then also stopped § 87(2)(b) and requested § 87(2)(b)'s license. § 87(2)(b) did not provide his license. Police Officer Seely told § 87(2)(b) that if he did not provide his license, he would rip him out of the vehicle. Additional officers, including Police Officer Murphy, Police Officer Henry Dasilva, Police Officer Fatime Osmanovic, Police Officer Brendan Murphy and Lieutenant John Lewis of the 46<sup>th</sup> Precinct, responded. Police Officer Seely continued to ask § 87(2)(b) for his license. Police Officer Seely eventually told § 87(2)(b) to exit the vehicle. Police Officer Dasilva and Police Officer Seely opened § 87(2)(b)'s front passenger door and told § 87(2)(b) to exit the vehicle. Police Officer Seely grabbed § 87(2)(b) by the arm and removed him from the vehicle and handcuffed him (**Allegation A, Force**, § 87(2)(g)).

Police Officer Dasilva and Police Officer Murphy searched § 87(2)(b)'s vehicle (**Allegations B and C-Abuse of Authority**, § 87(2)(g)). § 87(2)(b) was taken to the 46<sup>th</sup> Precinct stationhouse and Lt. Lewis authorized the removal of § 87(2)(b)'s vehicle to the 46<sup>th</sup> Precinct stationhouse (**Allegation D-Abuse of Authority**, § 87(2)(g)).

§ 87(2)(b) was arrested and released with four summonses for disorderly conduct, failure to comply with a lawful order, failure to use due care when passing an emergency vehicle and failure to present document-NYC (**Allegation E, Abuse of Authority**, § 87(2)(g)). As he left the precinct stationhouse, an officer told § 87(2)(b) that if he did not listen, they were going to put him back in the holding cells (**Allegation F, Abuse of Authority**, § 87(2)(g)).

§ 87(4-b), § 87(2)(g)

One body-worn camera video from Police Officer Dasilva, two body-worn camera videos from Police Officer Seely and video footage from § 87(2)(b)'s cell phone was obtained for this incident (BR 01, 02, 03 and 04).

### Findings and Recommendations

#### **Allegation (A) Force: At East 180<sup>th</sup> Street and the Grand Concourse in the Bronx, Police Officer Tyrone Seely used physical force against § 87(2)(b)**

It is undisputed between PO Seely, § 87(2)(b) and PO Seely's body-worn camera footage, that on February 11, 2019, at approximately 12:10 p.m. PO Seely stopped § 87(2)(b) at East 180<sup>th</sup> Street and the Grand Concourse in the Bronx for failure to use due care when approaching an emergency vehicle. PO Seely repeatedly requested § 87(2)(b)'s driver's license to issue a summons and § 87(2)(b) did not provide it. PO Seely replied that he was going to issue him a summons. § 87(2)(b) refused to provide his license. PO Seely called for back-up. PO Seely

opened § 87(2)(b)'s driver's door and told him to get out, and § 87(2)(b) refused. Additional officers arrived, including PO Dasilva who, opened the front passenger's door, entered the vehicle to unbuckle § 87(2)(b)'s seatbelt and asked him to exit. PO Seely entered the vehicle and removed the seatbelt from around § 87(2)(b) grabbed § 87(2)(b)'s arm and handcuffed him.

While PO Dasilva entered § 87(2)(b)'s vehicle and unbuckled § 87(2)(b)'s seatbelt because he was under arrest, ultimately, he made no physical contact with § 87(2)(b). Therefore, a force allegation is not being pleaded against PO Dasilva.

Both PO Seely and PO Dasilva confirmed that at the time they entered § 87(2)(b)'s vehicle, § 87(2)(b) was under arrest for disorderly conduct. PO Seely stated that aside from needing to identify § 87(2)(b) there was no other reason for which he was arrested.

When issuing a civil summons, an officer is to establish the violator's identity and mailing address through observation of valid identification documents. If they do not possess a valid form of identification, the officer is to remove the violator to the command, Patrol Guide Section 209-03 (BR 13). A person is guilty of disorderly conduct when they intend to cause public inconvenience, annoyance or alarm, or recklessly creating a risk, Penal Law Section 240. 20 (BR11). Force may be used when it is reasonable to place a person in custody. In determining whether the use of force is reasonable members of service should consider, the actions taken by the subject and the duration of the action, Patrol Guide Section 221-01 (BR15). A police officer may, as a precautionary measure and without particularized suspicion, require occupants of a lawfully stopped vehicle to exit of the car. People v. Garcia, 20 N.Y. 3d 317 (2012) (BR14).

§ 87(2)(g)  
[REDACTED]

§ 87(2)(g)  
[REDACTED]

**Allegation (B) Abuse of Authority: At East 180<sup>th</sup> Street and the Grand Concourse in the Bronx, Police Officer Henry Dasilva searched the vehicle in which § 87(2)(b) was an occupant.**

**Allegation (C) Abuse of Authority: At East 180<sup>th</sup> Street and the Grand Concourse in the Bronx, Police Officer Brendan Murphy searched the vehicle in which § 87(2)(b) was an occupant.**

In PO Dasilva's body-worn camera, PO Dasilva is depicted, at 1:13 minutes on the VLC media player, reaching into the driver's seat, picking up a pillow on the seat, tossing it to the front passenger seat, and grabbing a jacket in the driver's seat. PO Dasilva pats the jacket. At 2:12 minutes on the VLC media player, PO Murphy opens the passenger door on the driver's side,

leans part of his body inside, crossing the plane of the doorway. At 2:12 minutes on the VLC media player, PO Dasilva enters the vehicle through the front passenger door, touches the pillow momentarily and then exits (BR01).

§ 87(2)(b) was removed from the vehicle and did not witness these allegations but he left his cell phone recording.

The video § 87(2)(b) provided, depicts PO Dasilva enter and sit in the driver's seat of the vehicle at 6:47 minutes on the VCL media player (BR04).

PO Dasilva went to the driver's seat and checked § 87(2)(b)'s jacket. PO Dasilva squeezed the jacket all over, including the pockets, but did not enter the pockets of the jacket to see why § 87(2)(b) kept reaching towards the seatbelt and jacket were (before he was removed from the vehicle). PO Dasilva looked around the seatbelt and under the seat. PO Dasilva checked underneath the driver's seat for any weapons that could potentially hurt him. PO Dasilva did not check anywhere else in the vehicle aside from the driver's seat and the front passenger's seat. He did not see another officer enter § 87(2)(b)'s vehicle. PO Dasilva drove § 87(2)(b)'s vehicle back to the 46<sup>th</sup> Precinct stationhouse.

PO Murphy did not have an independent recollection of whether he looked in the back of § 87(2)(b)'s vehicle. Based on his review of PO Dasilva's body-worn camera footage, he believed he looked inside the vehicle on the driver's side for a few seconds as § 87(2)(b) was arrested and he wanted to ensure there were no weapons in the vehicle as it was to be taken back to the precinct stationhouse.

The court determined that after a lawful custodial arrest, the search of an arrestee's jacket, which was located inside the passenger compartment of the car, in which the arrestee had been a passenger just before he was arrested, was within the arrestee's immediate control. The court determined that the search of the jacket was a search incident to a lawful custodial arrest, New York v. Belton, 453 U.S. 454 (1981) (BR07).

§ 87(2)(g)

**Allegation (D) Abuse of Authority: At East 180<sup>th</sup> Street and the Grand Concourse in the Bronx, Lieutenant John Lewis seized § 87(2)(b)'s property.**

It is undisputed that § 87(2)(b)'s vehicle was taken back to the 46<sup>th</sup> Precinct stationhouse.

The body-worn camera footage shows Lieutenant Lewis arrive on scene after § 87(2)(b) has been removed from his vehicle and is being escorted to the police vehicle.

A vehicle is taken into custody where the vehicle operator was arrested for a crime, Patrol Guide Section 218-48 (BR16).

§ 87(2)(g)

**Allegation (E) Abuse of Authority: At the 46<sup>th</sup> Precinct stationhouse, Police Officer Tyrone Seely issued § 87(2)(b) a summons.**

In addition to the three summonses issued to § 87(2)(b) for vehicular violations, PO Seely also issued § 87(2)(b) a summons for disorderly conduct for engaging in fighting or in violent, tumultuous or threatening behavior (BR08). § 87(2)(b) did not yell or curse during the stop. After he was handcuffed and placed in the back of the police vehicle, he cursed.

The body-worn camera does not capture § 87(2)(b) yelling at officers or using any abusive, obscene language or gestures while he is still in his own vehicle. The body-worn camera footage did not capture § 87(2)(b) fighting or engaged in threatening behavior, disturbing a lawful assembly, congregating with people in a public place, refusing to disperse, or creating a hazardous or physically offensive condition.

PO Seely cited subsection one of the disorderly conduct penal law, which notes that a person is guilty of disorderly conduct when with intent to cause public inconvenience, annoyance or alarm, recklessly create a risk by engaging in fighting or in violent, tumultuous or threatening behavior. On the summons PO Seely noted that § 87(2)(b) yelled at two uniformed officers. § 87(2)(b) refused orders and caused public alarm.

PO Seely did not remember what § 87(2)(b) yelled. PO Seely stated that § 87(2)(b) caused public alarm when § 87(2)(b) made a scene by yelling at officers on scene. PO Seely did not remember if § 87(2)(b) used any profanity when he yelled. PO Seely did not remember if any civilians gathered or stopped to observe what was going on. PO Seely specified that § 87(2)(b) committed disorderly conduct when he tried to obtain § 87(2)(b)'s driver's license while he was still in the vehicle. PO Seely did not remember if § 87(2)(b) did anything else that caused public annoyance or inconvenience.

A person is guilty of disorderly conduct when they intend to cause public inconvenience, annoyance or alarm, or recklessly creating a risk by (1) engaging in fighting or in violent, tumultuous or threatening behavior; (2) they make an unreasonable noise, (3) use abusive or obscene language or gestures in a public place; (4) without lawful authority disturbs any lawful assembly; (5) obstructs vehicular or pedestrian traffic, congregating with other persons in a public place; (6) they refuse to comply with a lawful order of the police disperse; (7) or they create a hazardous or physically offensive condition, Penal Law Section 240. 20 (BR11). Critical to a charge of disorderly conduct is finding that defendant's disruptive statements and behavior were of a public rather than an individual dimension. Isolated statements using coarse language to criticize the actions of a police officer, unaccompanied by provocative acts or other aggravating circumstances, will rarely afford a sufficient basis to infer the presence of the "public harm" men

rea necessary to support a disorderly conduct charge, People v. Baker, 20 N.Y. 3d 354 (2013) (BR17).

§ 87(2)(g)

§ 87(2)(g)

**Allegation (F) Abuse of Authority: At the 46<sup>th</sup> Precinct stationhouse, an unidentified officer threatened to arrest** § 87(2)(b)

§ 87(2)(b) testified that after he was released but before he left the precinct stationhouse, he tried to make sure he did not leave anything behind at the 46<sup>th</sup> Precinct stationhouse, PO Seely and another unidentified officer screamed at him to get out of the stationhouse and told him that if he did not listen, they were going to put him back in the cell and send him to Central Booking.

§ 87(2)(b) described this officer as a uniformed black female with a “skinny” build and straight black hair. He was not sure if this officer made the same remarks as PO Seely.

PO Seely’s BWC captured PO Seely tell § 87(2)(b) at 20 seconds on the VLC media player say, “Listen, you’re going to go right back in there and go through the system. You will go back in there, that’s not a threat.” Since § 87(2)(b) was still in the cell area, handcuffed and in police custody at the time, no threat of arrest allegation is pleaded against PO Seely.

PO Dasilva and PO Seely were consistent that they did not hear an officer tell § 87(2)(b) that if he did not leave, then they were going to put him back in the cells and send him to central booking.

The 46<sup>th</sup> Precinct Tour 2 Roll Call on February 11, 2019, did not list any black females assigned to the 46<sup>th</sup> Precinct stationhouse (BR 08). The body-worn camera footage does not capture an officer telling § 87(2)(b) that if he did not hurry they would put him back in the cell.

§ 87(2)(g)

§ 87(4-b) § 87(2)(g)

§ 87(4-b), § 87(2)(g)

### **Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR09).
- PO Seely has been a member of service for eight years and has been a subject in six CCRB complaints and 13 allegations, of which one was substantiated.
  - Case number 201609849 involved substantiated allegations of abuse of authority for the entry and/or search of premises against PO Seely. The Board recommended formalized training and the NYPD imposed formalized training.
  - § 87(2)(g)
- PO Murphy has been a member of service for six years and has been a subject in 10 CCRB complaints and 23 allegations, of which one was substantiated.
  - Case number 201902127 involved substantiated allegations of abuse of authority for failure to provide a right to know card. The Board recommended command level 1 instructions and the NYPD has not yet imposed discipline.
  - § 87(2)(g)
- PO Dasilva has been a member of service for 14 years and this is the first CCRB complaint to which he has been a subject.
- PO Osmanovic has been a member of service for four years and this is the first CCRB complaint to which she has been a subject.
- Lt. Lewis has been a member of service for 20 years and has been a subject in two CCRB complaints, and two allegations, none of which were substantiated. § 87(2)(g)

### **Mediation, Civil and Criminal Histories**

- § 87(2)(b) declined to mediate the complaint.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
- A Notice of Claim was requested from the New York City Comptroller's office on August 27, 2019, and will be added to the case file upon receipt.

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Squad No.: \_\_\_\_\_

Investigator: \_\_\_\_\_  
Signature Print Title & Name Date

Squad Leader: \_\_\_\_\_  
Signature Print Title & Name Date

Reviewer: \_\_\_\_\_  
Signature Print Title & Name Date